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NO. 81-5947

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EURUS KELLY WATERS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

I.

Whether this Court should grant the writ of certiorari to review two issues which were not properly raised or ruled upon in the Georgia Supreme Court?

II.

Whether the Georgia Supreme Court properly affirmed the denial of Petitioner's motion for change of venue?

III.

Whether the existence of valid statutory aggravating circumstances supporting Petitioner's death penalty, in addition to those which were vacated by the Georgia Supreme Court, renders harmless any error in submitting the invalid statutory aggravating circumstances to Petitioner's trial jury?

IV.

Whether, under the facts of this case, Petitioner's death penalty constitutes cruel and unusual punishment?

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PART ONE

STATEMENT OF THE CASE

Petitioner, Eurus Kelly Waters was indicted on May 13, 1980 by the Glynn County, Georgia Grand Jury for the murders of Anita Lynette Paseur and Kathryn Ann Culpepper. (R. 3, 4).[1/] Petitioner was tried on January 19-24, 1981, was found guilty on two counts of murder and received the death penalty as to each count. (R. 65-69). Petitioner's convictions were affirmed on direct appeal to the Georgia Supreme Court. Although said court vacated three of the six of Petitioner's statutory aggravating circumstances it affirmed his death penalties under the remaining statutory aggravating circumstances. Waters v. State, 248 Ga. 355, ___S.E.2d___ (Oct. 8, 1981), rehng. den., (Oct. 27, 1981).

1/ References to the pagination of the official record from Petitioner's trial in the Superior Court of Glynn County, Georgia shall be referred to in this brief as (R. ___). References to the pagination of Petitioner's trial transcript shall be referred to as (T. ___).

PART TWO

STATEMENT OF THE FACTS

A detailed account of the evidence which was produced at Petitioner's trial, and which authorized his convictions and death sentences, is set out in the opinion of the Georgia Supreme Court. Waters v. State, supra. The evidence was overwhelming.

The state's material evidence was undisputed. Petitioner Waters did not work as a cab driver on April 25, 1980, although he did take his wife to her job. (T. 695, 1110, 1131). Shortly after lunch, Petitioner was seen in the north picnic area on Jekyll Island. (T. 647-649). Later Petitioner drove his 1974 white Chevrolet to the New Marina area of Jekyll Island. (T. 1152, 1153).

Holding a revolver, Petitioner got out of his car when he saw Anita Paseur and Kathryn Culpepper walking from the beach toward their red car. (T. 1154, 1155, 1161). He forced them to walk approximately 100 yards into the woods at gunpoint. (T. 637, 1155-1156, 1163). Petitioner ordered the women to handcuff themselves together, which they did. (T. 637, 1156, 1163). Kathryn Culpepper was ordered to undress and Petitioner orally sodomized her while sixteen year old Anita Paseur was hysterically screaming. (T. 1156, 1157, 1164). Mrs. Culpepper redressed and both unarmed women allegedly attempted to lunge at Petitioner Waters. (T. 1158, 1165). Petitioner fired two shots at close range. (T. 1158, 1165, 1179). Kathryn Culpepper was struck by a bullet and fell backwards. (T. 1158, 1165). Anita Paseur was also shot but Petitioner nevertheless ripped at her clothing. (T. 789, 1159, 1166).

Petitioner Waters left both women for dead. (T. 1158, 1180). As Petitioner walked by the red car, he took Mrs. Culpepper's purse from the front seat and drove away. (T. 1159, 1167).

Kathryn Culpepper released the handcuff from Anita Paseur's wrist and drove to a nearby gas station for help. (T. 633, 635). Mrs. Culpepper gave a description of Petitioner and related the facts of the incident. (T. 637, 638, 643-644). An ambulance took Mrs. Culpepper to the Glynn-Brunswick Memorial Hospital where she subsequently died as a result of the gunshot wound. (T. 638, 672).

Ms. Paseur's lifeless body was found in the New Marina area lying on her back with a bullet wound in the breast. (T. 645-646, 759-760). Her clothing was torn and there was a bruise on her right wrist as a result of being handcuffed. (T. 760, 762). The cause of death was a gunshot wound to the chest. (T. 673-680).

Brantley County Deputy Sheriff Jerry Rowell was patrolling the Satilla River Bridge on Highway 84 at approximately 4:30-5:00 p.m. on April 25, 1980. (T. 653-654, 657). Officer Rowell stopped Petitioner's vehicle for D.U.I. (T. 655, 657). Petitioner pulled his car to the wrong side of the road and tossed Kathryn Culpepper's purse over the bridge when he observed the patrol car's flashing blue light. (T. 658, 788, 1159-1160, 1169). However, officer Rowell did not see Petitioner throw the purse away and released him. (T. 659, 660).

Four days after the incident, Petitioner's wife read a newspaper account of the murder and realized the assailant's description fit that of her husband. (T. 1118-1119, 1133-1134, 1136). Family members met with Petitioner who stated "I think I may have killed some people." (T. 1087, 1121, 1133). On

Sunday, May 4, 1980, Officer Ed Dixon of the Glynn County Police Department met with the family and was given the murder weapon. (T. 718-719, 1095-1097).

GBI Special Agent Scott Curley received the revolver on May 5, 1980. (T. 765). At approximately 2:25 p.m. Agent Curley picked up Petitioner at his home and they drove to the patrol station for questioning. (T. 774). After being read his Miranda rights, Petitioner gave officers permission to obtain his clothing, ammunition and holster as evidence of the murders. Petitioner Waters was placed under arrest and charged with two counts of murder. (T. 782). Petitioner was again read his Miranda rights. (T. 782). Petitioner made a voluntary statement to law enforcement officers that he shot both Kathryn Culpepper and Anita Paseur, and he related the events of April 25, 1980. (T. 786-790).

Petitioner's defense was insanity. Since 1978 he had been taking medication for agitation and restlessness. (T. 873, 916). Psychiatrist Dr. Lorenzo Lecumberri stated Petitioner was in good contact with reality in September 1979 and knew the difference between right and wrong. (T. 950, 953, 956-957). Petitioner was oriented and functioning well when seen at the Waycross Mental Health Clinic for medication monitoring on March 19, 1980. (T. 881, 917).

Petitioner participated in a complete physical and neurological examination as well as psychiatric evaluation after the murders of Kathryn Culpepper and Anita Paseur. (T. 973-974, 994-995, 1013-1015). Petitioner was aware of his behavior on April 25, 1980, knew right from wrong, and was not psychotic. (T. 996-997, 1003, 1189-1190). Petitioner was in good contact with reality. (T. 1016-1017).

Petitioner Waters testified at trial and did not deny shooting the unarmed women at close range. (T. 1161, 1179). Petitioner testified he had not taken his medication for a week prior to the murders and had been drinking alcohol. (T. 1152, 1170, 1181). All rebuttal witnesses testified that Petitioner appeared to be normal and knew right from wrong. (T. 1184, 1185-1186, 1187, 1189).

Other facts will be developed, as necessary, in the discussion of Respondent's argument and citation of authority.

PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. SINCE PETITIONER HAS FAILED TO PROPERLY RAISE, IN THE GEORGIA SUPREME COURT, THE FEDERAL QUESTIONS WHICH HE NOW RAISES UNDER HIS FIRST AND FOURTH ARGUMENTS URGING ISSUANCE OF THE WRIT, THIS COURT SHOULD NOT GRANT THE WRIT OF CERTIORARI TO REVIEW SAID ISSUES.

Petitioner's first argument urging issuance of the writ in the instant case, contends that Petitioner's constitutional rights were violated and his conviction should be vacated, because he was allegedly not afforded counsel at a committal hearing prior to indictment. Petitioner admits this issue was not raised on appeal to the Georgia Supreme Court. Petitioner's fourth argument asserts that the writ should be granted to review the sufficiency of the trial court's instructions during the sentencing phase of Petitioner's trial, particularly pertaining to instructions

on mitigating circumstances. Petitioner contends that the instructions failed to define mitigating circumstances, gave no examples of mitigating circumstances, failed to instruct the jury to particularly consider the relevant aspects of the defendant's character, and finally, failed to give the jury proper guidance in regards to the proper relationship between aggravating and mitigating factors. Contrary to Petitioner's contention, these issues are being specifically raised for the first time in this petition. Pertaining to instructions on mitigating circumstances, the Georgia Supreme Court did review sua sponte the question of whether or not the jury was properly instructed that it could impose a life sentence even though it found the existence of statutory aggravating circumstances. Waters v. State, 248 Ga. at p. 369-370, citing Hawes v. State, 240 Ga. 327, 240 S.E.2d 833 (1977) and Fleming v. State, 240 Ga. 142, 240 S.E.2d 37 (1977). However, the aforesaid specific issues which Petitioner raises under the fourth argument in the instant application for a writ of certiorari, were not raised by Petitioner in the Georgia Supreme Court, nor were they specifically addressed by said court.

This Court has consistently ruled that federal constitutional issues raised for the first time on appeal from a state court decision will not be reviewed. Cardinale v. Louisiana, 394 U.S. 437, 89 S.Ct. 1163, 22 L.Ed.2d 398 (1969); Tacon v. Arizona, 410 U.S. 351, 93 S.ct. 998, 35 L.Ed.2d 346 (1973); also see, 28 U.S.C. § 1257. Thus, since the federal questions have not been properly raised, preserved or passed upon in the state Supreme Court below, this Court should decline to accept jurisdiction to review Petitioner's first or fourth arguments.

II. THE GEORGIA SUPREME COURT PROPERLY AFFIRMED THE TRIAL COURT'S RULING DENYING PETITIONER'S MOTION FOR A CHANGE OF VENUE.

A review of the record in this case amply supports the Georgia Supreme Court's affirmance of the trial court's denial of Petitioner's motion for a change of venue. The murders in this case were committed on April 25, 1980, but Petitioner was not tried until January 19, 1981. (R. 3, T. 1). Petitioner's attorneys filed a motion for a change of venue, and the trial court conducted a hearing thereon on December 2, 1980.[2/] Petitioner's evidence in support of his motion was weak. For example, he presented testimony and newspaper clippings pertaining to articles which were written by three newspapers whose circulation included the Glynn County area. (MV. 1-45). Mr. Brent Green from the Florida Times Union testified that his circulation in Glynn County, which he estimated to contain approximately forty thousand people, varied from 2,098 during the weekdays to approximately 4,000 on Sundays. (MV. 5, 8). During the nine month period between the time of the murders and the hearing, the Florida Times Union printed only fifteen articles relating to Petitioner's case. Witness John Harmon of the Savannah Morning and Evening News testified that they had approximately 600 subscribers and sold approximately 1,000 papers per day in Glynn County. Mr. Harmon testified that his paper ran only seventeen articles pertaining to Petitioner's case between the date of the murder and the hearing, and

2/ References to the pagination of the transcript of Petitioner's December 2, 1980 motion for change of venue hearing shall be referred to as (MV.___).

from approximately the middle of May through October there were no articles written. (MV. 19, 27-29).

Witness Barry Inman, a reporter with the Brunswick News, likewise testified that his paper ran only seventeen articles on the incident. His paper had a circulation of 13,751. (MV. 33). Mr. Inman further testified that none of the seventeen articles were even on the front page of his paper.

Petitioner has over emphasized the report of the defendant's confession. For example the reference in the Savannah Morning and Evening News and in the Brunswick News to Petitioner's confession only indicated that the Petitioner had made a confession, but gave no details of the statement. (MV. 23-24, 39). Petitioner's own references to the various newspaper articles indicate that they were published shortly after the incident and Petitioner's arrest.

Likewise, Petitioner's references to the radio broadcast failed to show sufficient publicity which would have justified the granting of a motion for change of venue. A review of the radio announcements indicates that they were strictly factual, and were not inherently prejudicial to Petitioner. The same information which was released in the broadcasts was testified to at trial. As with the newspaper articles, the radio broadcasts occurred in April and early May. Finally, Petitioner's references to the security measures at trial simply demonstrated that the sheriff had taken prudent measures to protect the Petitioner's security. (MV. 64-72). The sheriff indicated that he had observed no problems with security, could provide adequate security at trial, and there was no danger of any mob action against the Petitioner. (MV. 70-72). The state put up numerous

witnesses whose testimony established that Petitioner could receive a fair and impartial trial in Glynn County, and that the pretrial publicity would have little or no influence on the availability of an impartial jury.

As is detailed by the Georgia Supreme Court in its opinion in this case, the jury voir dire also showed that only ten jurors out of seventy were excused for cause because of prejudicial pretrial publicity, and the remaining jurors expressed either no preconceived opinion, or indicated that they could set aside their preconceived notions and decide the case based upon the evidence presented and the law as charged.

It appears that in order to find that a criminal defendant did not receive a fair trial because of pretrial publicity, he must show: (1) that the jury selection process demonstrated actual prejudice resulting from the pretrial publicity, or (2) the setting of the trial was so inflammatory or prejudicial as to render virtually impossible a fair trial by an impartial jury drawn from the community. Under this latter circumstance, prejudice may be presumed. See, United States v. Capo, 595 F.2d 1086, 1090 (5th Cir. 1979), cert. den., 444 U.S. 1012 (1980); Mayola v. State of Alabama, 623 F.2d 992, 996-997 (5th Cir. 1980). Neither of these situations was involved in the instant case. Here, there was no such total inundation of the judicial process by publicity as was found in cases such as Estes v. Texas, 381 U.S. 532, 95 S.Ct. 1628, 14 L.Ed.2d 543 (1965) or Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). In Estes and Sheppard, the publicity saturated the immediately surrounding community with articles concerning the crime, and the news media also controlled the courtroom creating a "carnival atmosphere" during

the trial. In Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963) prejudice was presumed; however, the defendant had personally confessed in a televised interview which was broadcast three times in the same Louisiana parish where the defendant had been tried. Such was not the case at Petitioner's trial. As noted previously, the reference to Petitioner's confession was only that, and contained no details of his statements.

In Irvin v. Dowd, 366 U.S. 717, 723, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961), this Court stated that the proper test for an individual prospective juror, is whether that juror "can lay aside his impression or opinion and render a verdict based upon the evidence presented in the court." In formulating this test, this Court noted:

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interests of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard." Id.

The defendant has a right to a fair trial, free from emotionalism and sensationalism; however, jurors need not be totally ignorant of the facts and issues involved. Murphy v. Florida, 421 U.S. 794, 799-800, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975).

Contrary to Petitioner's assertions, it is clear that the Georgia Supreme Court did take into consideration both the jury voir dire and the evidence presented at the motion for change of venue hearing. See Waters v. State, supra, 248 Ga. at p. 360-361.

Since Petitioner was unable to show either actual prejudice because of the pretrial publicity, or an influx of pretrial publicity which demonstrated that the atmosphere in the community was such that a fair trial was impossible so as to presume prejudice, the Georgia Supreme Court was correct in affirming the denial of Petitioner's motion for change of venue. Thus, this Court should decline to grant the writ of certiorari to review Petitioner's second argument pertaining to the denial of his motion for change of venue.

III. SINCE THE GEORGIA SUPREME COURT FOUND THAT PETITIONER'S DEATH PENALTY WAS AMPLY SUPPORTED BEYOND A REASONABLE DOUBT BY THE EXISTENCE OF ADDITIONAL STATUTORY AGGRAVATING CIRCUMSTANCES BESIDES THOSE WHICH HAD BEEN VACATED BY SAID COURT IN ITS APPELLATE REVIEW, ANY ERROR IN SUBMITTING THE INVALID STATUTORY AGGRAVATING CIRCUMSTANCES TO THE JURY WAS HARMLESS BEYOND ALL REASONABLE DOUBT.

As noted by the Georgia Supreme Court in its opinion on Petitioner's direct appeal, the jury found three aggravating circumstances supporting the death penalty for each of the murders. Under Count One of the indictment charging Petitioner with the murder of Anita Paseur, the jury found the following aggravating circumstances: (1) that the murder was committed while Petitioner had been engaged in the commission of another capital felony, to wit: the kidnapping with bodily injury of Kathryn Ann Culpepper; (2) that the murder was committed while the Petitioner had been engaged in the commission of another capital felony, to wit: the murder of Kathryn Ann Culpepper; and (3) that the murder was committed while the Petitioner had been engaged in another capital felony, to wit: the aggravated sodomy of Kathryn Ann Culpepper.

As to Count Two of the indictment, charging Petitioner with the murder of Kathryn Ann Culpepper, the jury found as statutory aggravating circumstances that: (1) the murder was committed while the Petitioner had been engaged in the commission of another capital felony, to wit: the kidnapping with bodily injury of Anita L. Paseur; (2) that the murder was committed while the Petitioner had been engaged in the

commission of another capital felony, to wit: the murder of Anita L. Paseur; and (3) the murder was committed while the Petitioner had been engaged in another capital felony, to wit: the aggravated sodomy of Kathryn Ann Culpepper.

Upon reviewing these statutory aggravating circumstances, the Georgia Supreme Court first observed that two of the statutory aggravating circumstances [the murder of Kathryn Culpepper having been committed during the murder of Anita Paseur, and the murder of Anita Paseur having occurred during the murder of Kathryn Culpepper] were mutually exclusive, and thus under the authority of Gregg v. State, 233 Ga. 117, 210 S.E.2d 659 (1974), the court vacated one of the aggravating circumstances. Thus, the court eliminated the aforesaid second aggravating circumstance supporting the Petitioner's death penalty for Kathryn Culpepper's murder, that being that her murder was committed during the course of the murder of Anita Paseur. Waters v. State, supra, 248 Ga. at p. 368.

Additionally, the Georgia Supreme Court recognized that aggravated sodomy was not a "capital felony" within the (b)(2) statutory aggravating circumstance under Ga. Code Ann. § 27-2534.1.[3/] Thus, the Georgia Supreme Court vacated the aforesaid third aggravating circumstance supporting both Ms. Culpepper's and Ms. Paseur's murders. Petitioner argues that since the aggravated sodomy aggravating circumstance was found to have been erroneously imposed, then as a matter of law, Petitioner's death penalty should be vacated, because

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3/ A jury may impose the death penalty under Ga. Code Ann. § 27-2534.1(b)(2) if it finds that: "The offense of murder . . . was committed while the offender was engaged in the commission of another capital felony, or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary or arsen in the first degree."

it would be unclear as to whether or not the jury would have recommended the death penalty solely upon the finding of the remaining, valid aggravating circumstances. A similar issue is now before this Court in Zant v. Stephens, Case No. 81-89. See, Stephens v. Zant, 631 F.2d 397 (5th Cir. 1980), amended en banc, 648 F.2d 446 (5th Cir. 1981); Stephens v. Hopper, 241 Ga. 596, 247 S.E.2d 92 (1978), cert. den., 439 U.S. 991 (1978). Since this Court's ruling in Zant v. Stephens, supra, may have a direct and immediate bearing upon the instant case, the Court may wish to delay the ultimate decision as to whether certiorari should be granted here, until after the decision in Stephens, supra.

Of course, in addition to Stephens v. Hopper, supra, there are numerous other Georgia death penalty cases which hold that following a finding of two or more statutory aggravating circumstances supporting a death penalty, each of which having been established beyond a reasonable doubt, the death penalty should not be vacated because one of the statutory aggravating circumstances is later set aside. See, e.g., Hamilton v. State, 246 Ga. 262, n. 1, 271 S.E.2d 173 (1981), cert. den., 446 U.S. 961, rehng. den., ___U.S.___, 101 S.Ct. 1530 (1981); Burger v. State, 245 Ga. 458, 460-461, 265 S.E.2d 796 (1980), cert. den., 446 U.S. 988 (1980); Dampier v. State, 245 Ga. 427, 883, n. 1, 265 S.E.2d 565 (1980), cert. den., 449 U.S. 938 (1980); Fair v. State, 245 Ga. 868, 880, n. 1, 268 S.E.2d 316 (1980), cert. den., ___U.S.___, 101 S.Ct. 407 (1980), rehng. den., ___U.S.___, 101 S.Ct. 903 (1981). Such rulings by the Georgia Supreme Court are in recognition of the mutual exclusiveness of the statutory aggravating circumstances listed under Ga. Code Ann. § 27-2534.1 (b). Here, the jury's findings on the statutory aggravating

circumstances was based upon evidence that was properly admitted during Petitioner's trial. Even though the Georgia Supreme Court invalidated the aforesaid aggravating circumstances, the jury still had before it, all of the evidence which supported their findings of aggravated sodomy and murder. The jury's recommendation for the death penalty was not, and need not have been based solely upon the statutory aggravating circumstances, but was based upon all of the evidence before it in aggravation and in mitigation of punishment. The statutory aggravating circumstances, of course, are a prerequisite element which guides the jury's verdict; however, the jury may consider and may ultimately be swayed by other factors which it certainly is authorized to consider. Absent the removal of some material piece of evidence in aggravation or mitigation of punishment which was considered by the jury, the setting aside of less than all of the statutory aggravating circumstances found by the jury beyond a reasonable doubt, would have absolutely no effect on the process of jury deliberation in reaching or recommending an appropriate punishment.

Petitioner's reliance upon the principles announced in Stromberg v. California, 238 U.S. 359, 367-368, 51 S.Ct. 532, 75 L.Ed. 1117 (1931) is erroneous. A review of Stromberg demonstrates that the jury in that case had returned a general verdict of guilty, which could have rested upon either of three grounds, one of which was clearly impermissible. Because the verdict returned was a general one, it was impossible to determine whether the jury's verdict rested upon the unconstitutional ground since the jury had been instructed in the disjunctive. Similar circumstances were also addressed

in Street v. New York, 394 U.S. 576, 585-588, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969). Actually, there is language in Street which supports Respondent's argument that the existence of a separate, distinct and unchallenged aggravating circumstance found by the jury beyond a reasonable doubt, negates any need to grant certiorari to review Petitioner's case. In Street, this Court noted the danger recognized and addressed under the Stromberg principle, is not relevant in a situtation where the jury makes separate and distinct findings supporting their verdict.

> "There is no comparable hazard when the indictment or information in several counts and the conviction is explicitly declared to rest on findings of guilt on certain of these counts, for in such instances, there is positive evidence that the trier of fact considered each count on its own merits and spearately from the others." Street v. New York, 394 U.S. at p. 588.

Thus, since three of the six statutory aggravating circumstances were invalidated on legal grounds, and not because of the sufficiency of the evidence; this should not proscribe the imposition of Petitioner's death sentence based upon other separate, independent statutory aggravating circumstances found to exist by the jury beyond a reasonable doubt. Petitioner's third argument should be found to be unmeritorious.

IV. PETITIONER'S DEATH PENALTY DOES NOT CONSTITUTE CRUEL OR UNUSUAL PUNISHMENT UNDER THE FACTS OF THIS CASE.

A review of the Georgia Supreme Court's opinion reveals that the Court did consider all of the evidence at Petitioner's trial in affirming his death penalty, including medical testimony as to Petitioner's competence, and other testimony pertaining to his mental problems and condition. Although in the brief presented to this Court, Petitioner alleges a "black out" during the entire episode nevertheless, he made a full confession to the police pertaining to the details of the murders and testified to same during the trial. In its evaluation of the case, the Georgia Supreme Court noted that in addition to the medical testimony attesting to Petitioner's competence, there was evidence that the Petitioner came to the beach prepared to carry out his plan. He carried a pistol, a pair of handcuffs, and approached at least one other woman before he kidnapped and murdered the victims in this case. After fleeing the scene, he discarded the pocketbook which he stole, returned home to clean and reload his gun.

In conclusion, the facts of this case demonstrate a planned sexual attack which ultimately resulted in the death of two innocent women. The defendant was competent during the incident, knew right from wrong, and should now be held to suffer the penalty imposed for his unpardonable actions. This Court should find Petitioner's fifth argument to be totally without merit.

CONCLUSION

For all of the aforesaid reasons, Petitioner's request for a writ of certiorari should be DENIED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nicholas G. Dumich, Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent, upon counsel for Petitioner, by depositing a copy of same in the United States mail, with sufficient postage affixed thereon, and addressed to:

Ms. Ursula Bentele
Attorney at Law
165 West End Avenue
New York, New York 10023

This 28th day of January, 1982.

Nicholas G. Dumich

NICHOLAS G. DUMICH